

Risk Advisor



SUMMER 2018

Hurricane Season Started June 1st

Seasonal changes in Texas are often met with pleasant anticipation and sometimes with a sense of dread. Hurricane season is dreaded for very good reasons and that sense of dread is heightened by last season's onslaught of Hurricane Harvey. Hurricane season started June 1st and runs until November 30th, a full six months to stay alert and ready to take action. The outlook for 2018 according to many forecasters is for a season very similar to 2017. Colorado State University forecasts "that the 2018 Atlantic basin hurricane season will have slightly above average activity.... We anticipate a slightly above-average probability for major hurricanes making landfall along the continental United States coastline and in the Caribbean." Their specific prediction includes 14 named storms, seven hurricanes and three major hurricanes. An average hurricane season according to NOAA has 12 named storms, six hurricanes and three major hurricanes. Excerpts from Colorado State's press release follow:

EXTENDED RANGE FORECAST OF ATLANTIC SEASONAL HURRICANE ACTIVITY AND LANDFALL STRIKE PROBABILITY FOR 2018

We anticipate that the 2018 Atlantic basin hurricane season will have slightly above average activity. The current weak La Niña event appears likely to transition to neutral over the next several months, but at this point, we do not anticipate a significant El Niño event this summer/fall. The western tropical Atlantic is anomalously warm right now, while portions of the eastern tropical Atlantic and far North Atlantic are anomalously cool. Consequently, our Atlantic Multi-decadal Oscillation index is near its long-term average. We anticipate a slightly above-average probability for major hurricanes making landfall along the continental United States coastline and in the Caribbean. As is the case with all hurricane seasons, coastal residents are reminded that it only takes one hurricane making landfall to make it an active season for them. They should prepare the same for every season, regardless of how much activity is predicted. (as of 5 April 2018) By Philip J. Klotzbach¹ and Michael M. Bell² In Memory of William M. Gray³, Department of Atmospheric Science Colorado State University Fort Collins, CO 80523

Colorado State's forecast for the 2017 Hurricane season actually gave a high probability of a named storm impacting the Gulf Coast, which one did.

As you might expect, the Fund is still adjusting claims from Hurricane Harvey. As of April 30, 2018 there have been 52 claims reported from 12 members with a paid and reserved total of \$1,213,180. An updated Hurricane Preparedness Bulletin was issued last May 2017 right before the season began and we refer you to that for the Fund's recommendations for preparations and response. The bulletin is on the Fund's website at tcrmf.org in the Resources section or you may request a copy from Richard Wigzell at richard.wigzell@yorksg.com. As part of recent response to Harvey related claims, the Fund's two property claims adjusters, Velvet Dixon and Karyn Bartels have the following suggestions based on their experience with Harvey. Karyn suggests:



An image of Hurricane Harvey taken by the GOES-16 satellite as the storm collided with the Texas coast. (Image courtesy NASA.)

Prior to the hurricane hitting, get vehicles moved to a higher level (parking garage if possible), and board up as many windows as possible. Make sure your flood insurance is up to date if you are in a flood zone. Make sure all

your property information is up to date with underwriting. Unplug all electronics/computers to prevent surge, and move all valuable items to a safe place.

Once the storm has passed, protect your property from further damage. Pull out all wet items (carpet, baseboards, sheetrock, personal items), take as many photos as possible and make lists of inventory. Put plastic tarps over damage to roofs and remove trees/debris from property. Until a remediation company can get out to assist you, get as many fans operating to help get things dried out.

A caveat is that there is a 30 day waiting period before Flood Insurance becomes effective if you try to cover a property that is not yet insured. Wind insurance also has a geographic limitation that prohibits coverage when there is a named storm in the Gulf of Mexico or west of 80° west longitude or north of 20° north latitude. These lines demarcate areas just east of Florida in the Atlantic and in the northern Caribbean south of Cuba and are illustrated in red in the following map.



Velvet Dixon recommends that:

They (members) should do everything they can in the initial clean up then refer out to a mitigation company or have their own staff cut out the drywall to 2 or 4 feet depending on how high the water rose. Make repairs and bring in rental generators if available.

As a reminder of the approach of Hurricane season the National Hurricane Center in Miami issued an “Invest” for an area of disturbed weather just south of Cuba on May 22. An Invest is an area of low pressure that has the potential to develop into a tropical cyclone. This one was forecast to move into the Gulf of Mexico and possibly bring heavy rains into Florida and eastern Gulf coast states for the Memorial Day weekend. National Weather Service named the Invest Alberto on May 25. It then became the first named storm

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of the 2018 season. Alberto went ashore in the Florida Panhandle on Monday, May 28, with tropical force winds of 40 mph and gusts to 58 mph. Storm surge was minor but heavy rains occurred all along its track which eventually reached into the Great Lakes. Although Alberto was a minimal tropical storm it killed two television reporters when a tree was blown down on their van. No tropical storm should be taken lightly.

The Hot Season, Prevention and First Aid for Heat Related Illnesses

The Occupational Health and Safety Administration reports that out of 991 fatalities for which OSHA had closed its case file or issued citations in 2017, six of them were heat related deaths in Texas. There were two each in June, July and September of 2017. The National Weather Service also recorded 107 heat related fatalities in the United States in 2017. All of these injuries were preventable with the proper awareness, planning and prevention techniques.

Weather Fatalities 2017

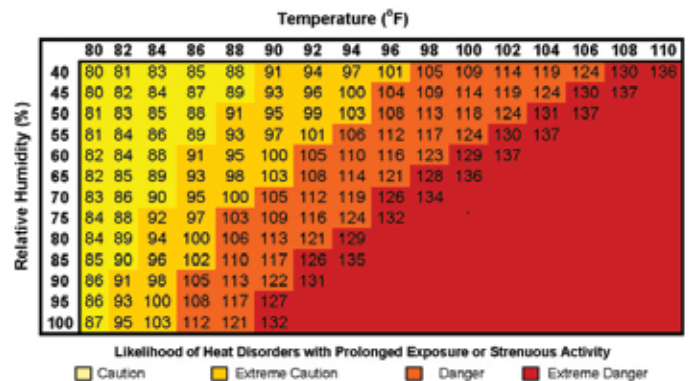


The U.S. Natural Hazard Statistics provide statistical information on fatalities, injuries and damages caused by weather related hazards. These statistics are compiled by the Office of Services and the National Climatic Data Center from information contained in Storm Data, a report comprising data from NWS forecast offices in the 50 states, Puerto Rico, Guam and the Virgin Islands.

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In Texas the onset of heat related illness can occur almost any time of the year especially in the southern part of the state. As temperatures and humidity rise through the spring and summer, members should take basic precautions to prevent heat related illnesses that can become life threatening conditions very quickly. Remember that ambient temperature is not the only factor that plays a role in creating the potential for heat injuries. Humidity is also important. Since our bodies rely on the evaporation of sweat as a major method of cooling, high humidity reduces our ability to cool the body, increasing the risk of heat illnesses. The following Heat Index chart shows the relative effects of temperature and humidity.

NOAA's National Weather Service Heat Index



As the chart illustrates, the danger of heat related illness is very great even at the relatively mild temperature of 90 degrees when the humidity is high. In addition to the chart above, OSHA has developed an "app" called the "Heat Safety Tool" for use on iPhone and Android devices. The app will calculate the heat index and provide an estimate of the heat illness risk levels. It also provides information on how to monitor for signs and symptoms of heat illness. There is no cost for this tool. The app is available for download from OSHA for both Apple and Android devices at:

https://www.osha.gov/SLTC/heatillness/heat_index/heat_app.html

The app also has a GPS location feature that gives the user site specific temperatures, humidity and heat index readings. Supervisors, staff conducting field trips and managers should use the chart and app in conjunction with local forecasts as they plan the workday for their crews or outings for their consumers. Planning for high heat and humidity includes the following important elements:

- ★ Equip each work truck, vans transporting consumers or worksite with adequate and easily accessible cool water and encourage frequent breaks and consumption of water during the day.
- ★ Workers should eat regular meals and snacks. The food provides enough salt and electrolytes to replace those lost through sweating, provided that enough water is consumed.
- ★ Make sure employees have appropriate clothing for the conditions. Heat and humidity are exacerbated by direct sunlight, so protection from the sun and UV rays is also important. Light weight, light colored clothing and a wide brimmed hat can help. If a hard hat must be worn, lightweight attachments can provide a wider brim and neck protection.

- ★ Consider schedule changes so heavy outside work can be done early in the day before temperatures peak. Re-schedule field trips for earlier or later in the day to avoid the heat.
- ★ Monitor employees and consumers for signs of heat related illness and take action quickly to avoid serious problems.
- ★ These recommendations apply equally to field trips and outings for IDD clients during hot weather. Consider cancelling trips due to extreme heat.
- ★ Common heat related illnesses, their symptoms and basic first aid include the following:
- ★ Heat Stroke is the most serious heat related illness and can cause death or permanent disability. It occurs when the body loses its ability to shed heat. When this happens the body's temperature rises rapidly. Symptoms include:
 - Hot, dry skin or profuse sweating
 - Hallucinations
 - Chills
 - Throbbing headache
 - Slurred speech
 - High body temperature
 - Confusion or dizziness

First Aid for Heat Stroke: 1st call 911 then move the worker out of the heat and direct sunlight and begin cooling by soaking clothes with water or spraying, sponging or showering them with water and fanning their body

- ★ Heat Exhaustion is the body's response to excessive loss of water and salt through sweating. Older workers and those with high blood pressure are more susceptible to heat exhaustion. Symptoms include:
 - Heavy sweating
 - Extreme weakness or fatigue
 - Confusion or dizziness
 - Nausea
 - Clammy, moist skin
 - Pale or flushed complexion
 - Muscle cramps
 - Fast and shallow breathing

First aid for heat exhaustion includes moving the worker to a cooler, preferably air conditioned space. Have them drink plenty of cool water or other non-alcoholic beverage and have them take a cool shower or bath. Monitor for worsening symptoms and be prepared to seek medical aid.

- ★ Heat cramps and heat syncope are other heat related illnesses. Heat cramps usually occur in leg, arm or abdominal muscles and are the result of depleted salt content due to heavy sweating. First aid includes stopping all activity and moving to a cooler place, drinking clear liquids or a sports beverage to replace lost electrolytes and avoiding strenuous work after the cramps subside.

- ★ Heat syncope or fainting / dizziness may occur after rising suddenly from a sitting or squatting position or from standing for a long period. It is the result of dehydration or lack of acclimatization to hot and humid climate. First aid is similar to that for heat cramps. In both cases, the worker should be monitored for other symptoms that may indicate onset of heat stroke or heat exhaustion.

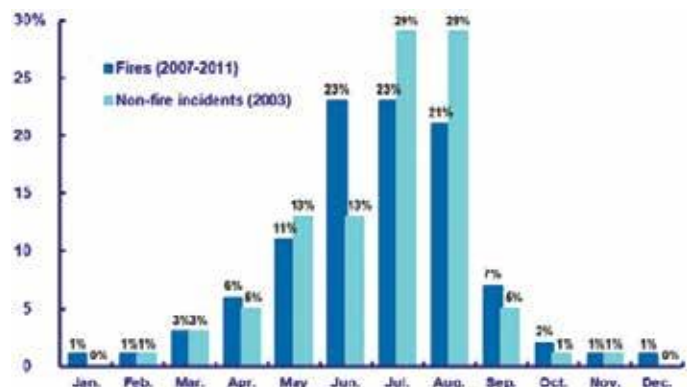
Community centers should train their workers to recognize signs of heat related illnesses and basic first aid measures. Although any worker may suffer from some of the symptoms of heat related illness, they are preventable and treatable before a life threatening condition arises. Train your staff to watch out for the signs and symptoms in each other and to not be afraid to take action.

Sources: Centers for Disease Control & Prevention, "Tips for Preventing Heat-Related Illness." OSHA and NOAA, National Weather Service

Some Facts About Lightning

Because lightning is a common occurrence in most people's lives, this destructive force does not get the respect it deserves. Every year lightning strikes the ground 30 million times and injures about one thousand people in the United States. In 2016, 38 people were killed by lightning in the United States. An analysis of homeowner's insurance data by the Insurance Information Institute found that there were more than 109,049 lightning claims in 2016. These ranged from damage to expensive electronic equipment to structural fires that destroyed entire homes. The average claim was \$7,572. In Texas in 2016 there were 9,098 homeowner's claims for lightning damage with an average cost of \$9,582.

Claims Caused by Lightning



Insurance Information Institute, current website, May 2018

According to the Lightning Protection Institute, three of the most common lightning myths are:

- ★ “Lightning never strikes the same place twice.” Fact: Lightning often strikes the same place repeatedly, especially if it is a tall, pointy, isolated object.
- ★ “If it is not raining or if there are no clouds overhead, you are safe from lightning.” Fact: Lightning often strikes more than three miles from the thunderstorm, far outside the area covered by the rain or even the thunderstorm clouds.
- ★ “Lightning rods attract lightning.” Fact: Lightning rods do not attract lightning. Instead, they provide a path to the ground for discharging the lightning’s electricity.

To protect yourself from lightning, the Insurance Information Institute and the Lightning Protection Institute recommend the following actions:

- ★ If you are outside with a thunderstorm approaching, seek shelter inside a building as soon as possible—ideally in a structure with a lightning protection system. If you hear thunder, then lightning is close enough to strike.
- ★ If a building is not available, take shelter in a car with a metal roof and keep doors and windows closed. It is the metal frame of the car that protects you from lightning and not the rubber tires. Wearing rubber soled shoes will also not provide any protection.
- ★ If there is no building or car in which to take shelter, try to minimize your risk by going to an area of lower elevation and staying away from bodies of water and trees.
- ★ There are a number of free to minimal cost weather apps for your Apple or Android devices that offer lightning detection in almost real time. These can give you warning of approaching lightning before you see or hear it. Check your app store or various websites devoted to lightning or weather.

Additional information on lightning safety is available on the National Weather Service web site (www.lightningsafety.noaa.gov/).

Arbitration Upheld

In a 5 - 4 decision delivered on May 21, 2018 the United States Supreme Court upheld the validity and enforceability of employer – employee arbitration agreements. The primary issue in contention in three cases, *Epic Systems Corp. v. Lewis*; *Ernest & Young LLP v. Morris*; and *NLRB v. Murphy Oil U.S.A., Inc.*, was limitation of the ability of

employees to enter collective actions in Fair Labor Standards Act disputes regarding overtime and pay. Collective actions are similar to class action suits but involve only a group of employees from the employer being accused of FLSA violations. Collective actions can involve huge time and dollar cost for defense and discovery involving many employment records. In 2012 the National Labor Relations Board held that arbitration agreements that limited workers’ rights to file collective action were unenforceable. The litigation trail began in 2012 resulting in the appellate courts being split. For Texas the Fifth Circuit Court of Appeals ruled that the waiver of collective action in arbitration agreements was enforceable while other courts like the Ninth Circuit in California ruled that they were not. Now the Supreme Court has decided the issue. The majority opinion was written by the newest member of the court, Neil Gorsuch. He resolved the argument that the National Labor Relations Act somehow overrode the Arbitration Act that codified arbitration agreements between employees and employers. The Arbitration Act clearly established the enforceability of arbitration agreements while the National Labor Relations Act protected the right of workers to collectively bargain but was silent on any other kind of employment agreement. Gorsuch wrote:

But as a matter of law the answer is clear. In the Federal Arbitration Act, Congress has instructed federal courts to enforce arbitration agreements according to their terms—including terms providing for individualized proceedings. Nor can we agree with the employees’ suggestion that the National Labor Relations Act (NLRA) offers a conflicting command. It is this Court’s duty to interpret Congress’s statutes as a harmonious whole rather than at war with one another. And abiding that duty here leads to an unmistakable conclusion. The NLRA secures to employees rights to organize unions and bargain collectively, but it says nothing about how judges and arbitrators must try legal disputes that leave the workplace and enter the courtroom or arbitral forum. This Court has never read a right to class actions into the NLRA—and for three quarters of a century neither did the National Labor Relations Board. Far from conflicting, the Arbitration Act and the NLRA have long enjoyed separate spheres of influence and neither permits this Court to declare the parties’ agreements unlawful.

The ruling removes any doubt about the enforceability of arbitration agreements that limit collective actions. It also resolves all the different rulings from the various appellate courts that applied in different parts of the country.

In the model arbitration agreements provided by the Fund as templates for members’ use, the employee retains his or her rights to arbitrate wage and hour issues governed by the Fair Labor Standards Act as an individual but not as a

member of a complaining group in “collective action.” The advantage of arbitration is in reducing the duration and cost of fairly settling a dispute. A collective action can take years to resolve and cost enormous amounts of money and time. An individual FLSA matter in arbitration may take six to eight months to resolve at far less cost in time and legal fees. If the employee prevails they often receive more than if they win a collective action because of attorney’s fees deducted from the total settlement.

Sources: Lewis Brisbois Labor & Employment Law Client Alert, May 21, 2018 communication to clients, Cornell Law School, Legal Information Institute, Epic Systems Corp. v. Lewis, Supreme Court Decision, May 21, 2018

Safety Seminar Season Has Started

TCRMF Risk Control Consultants have developed some excellent presentations for the 2018 round of Safety Seminars. Topics for this year’s workshops are:

- ★ Workplace Violence
- ★ Emergency Preparedness
- ★ Falls
- ★ Infectious Diseases and Other Exposures
- ★ Recent Fund Claims Analysis

As usual the workshops will be presented at several locations around the state. Members are welcome to attend any one of the workshops and we have tried to choose locations convenient to most members. Workshops presented at the Andrews Center and Border Region Behavioral Health Center were well attended earlier in May. The following are the workshop dates and locations for the rest of 2018:

- ★ Starcare Specialty Health System, Lubbock, June 20, 2018
- ★ Behavioral Health Center of Nueces County, Corpus Christi, July 18, 2018
- ★ The Harris Center, Houston, August 22, 2018
- ★ The Harris Center, Houston, August 23, 2018
- ★ MHMR of Tarrant County, Fort Worth, October 10, 2018

The materials presented are designed to enhance the knowledge and capabilities of any center employee who has safety or risk management responsibilities. This includes safety officers, site safety coordinators, emergency response team members, risk managers and human resources claims

coordinators. A light breakfast and hearty lunch will be served. Online registration of each attendee will insure enough workbooks and food will be available. Register at www.tcrmf.org. There is no charge for these workshops.

Workers’ Compensation Pharmacy Benefit Manager

The Texas Council Risk Management Fund has contracted with Optum Workers’ Compensation Services, a pharmacy benefit management company to better serve our members’ injured employees in obtaining their pharmaceutical needs associated with the medical treatment of their workers’ compensation claim. Optum’s strategy is to manage prescription costs and enforce approved formulary guidelines while making the prescription process easier for injured workers.

Optum integrates several features to provide injured employees with convenient, hassle-free access to their medications. First, once a first report (DWC-1) is submitted to the Fund, Optum sends a letter to the injured worker. This letter includes a pharmacy card and instructions on how to use it. In addition, the letter lists the six nearest network pharmacy locations based on the injured worker’s mailing address, but the injured worker can go to the pharmacy of their choice as long as it is in the Optum network. Optum’s network includes over 50,000 retail pharmacies nationwide. A toll free number is available to find out if other nearby pharmacies are in the network. There is absolutely no out of pocket expense or any paperwork to complete by the employee when the service is used.

The pharmacy card is designed to be simple and convenient for the injured worker. Optum’s staff may call injured workers to encourage and educate them on how to use the pharmacy card. In addition, Optum’s pharmacy card includes remote management security features that allow Optum to instantly respond should the card be lost, stolen or otherwise misused. Optum also works on converting name-brand medications to generics, when appropriate. The card can also be used for medical equipment such as rehab equipment, wheelchairs, TENS units and orthotics. Optum will also assist in setting up mail delivery of drugs if the employee desires that service. This provides significant savings to the Fund.

Optum is URAC accredited as meeting high standards of medical competency in its processes and services. URAC is the acronym for Utilization Review Accreditation Commission.

If you have any questions regarding the Fund’s workers’ compensation pharmacy benefit plan, please contact your workers’ compensation claims adjuster at 1-800-580-6467.